IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11401 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESHKUMAR ISHWARBHAI BHAROLIYA

Versus

SURAT MUNICIPAL INSTITUTE OF MEDICAL EDUCATION & RESEARCH

Appearance:

1. Special Civil Application No. 11401 of 2004

MR BM MANGUKIYA for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1,3

MR KB PUJARA for Respondent No. 2

Mr. Dipen A. Desai, AGP for Respondent No. 4

DS AFF.NOT FILED (N) for Respondent No. 4

MR DC DAVE for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/09/2004

ORAL JUDGEMENT

Rule. Shri KB Pujara, learned advocate waives

service of Rule on behalf of respondents No. 1 to 3, Shri Dipen A. Desai, learned AGP waives service of Rule on behalf of respondent No.4 and Shri Daval Dave, learned advocate waives service of Rule on behalf of respondent No.5. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent No.2 dated 4th September 2004 in cancelling admission of the petitioner and also subsequent order passed by the respondent No.4 Centralised Admission Committee dated 9th September 2004 in cancelling the admission of the petitioner in 1st year MBBS course in the respondents No. 1 & 2 Institution in the local quota meant for a candidate/student who is ordinary resident of Surat city.

3. Respondent No.1 is an Institution which is running a Medical College in the city of Surat and the said Medical College is run by the Surat Municipal Corporation. Fifty per cent of the seats are reserved for the candidates/students who are permanent ordinary residents of Surat City. That as such the admissions to the respondent No.3 College are given by the Centralised Admission Committee constituted by the State Government. Surat Municipal Corporation has framed rules for admission into MBBS course in the said Institution and the term "local students" is defined under the said Rules which means a student who has passed SSC Examination (Standard X) and/or qualifying examination from the school located within the limits of Surat Municipal Corporation and/or Surat Urban Development Authority (SUDA) area, provided he/she residing with the limits of Surat Municipal Corporation is required to be considered for the aforesaid quota. For obtaining admission as "local student", a candidate applying for admission as "local student" is required to submit documents as proof of being a "local student" and for that purpose as per Rule 1.4 of the Rules for admission into 1st year MBBS course a candidate desirous to apply for admission as "local student" as per Rule No.2 must enclose following documents as proof of local candidate.

1. House Tax Bill issued by the Surat Municipal Corporation showing him/her as owner/tenant;

2. Ration Card of the family;

3. Electricity Bill.

As per Rule 1.4, the College authority reserves the right to demand any other document as proof of evidence. The petitioner applied for admission in 1st year MBBS course in the college meant for "local students" of Surat city, and it is the contention of the petitioner that he has produced all the necessary documents which were required for the purpose of proving and establishing that he is of "local student" category and residing permanently and ordinarily within the local limits of Surat city. It is the contention on behalf of the petitioner that the petitioner was granted admission in the 1st year MBBS course, however it appears that some representations were made making allegation with regard to granting admission to candidates who are not local students and therefore a Committee was constituted by the Surat Municipal Corporation consisting of Medical Superintendent and Surgeon, one Deputy Commissioner and one Assistant Commissioner. It appears that the Committee scrutinised the documents produced by 84 candidates who were granted admission as "local students" and the Committee after holding inquiry found that two students inclusive of the petitioner did not furnish the requisite proof to show that the petitioner is having residence in the city of Surat and that the petitioner is not the resident of the Surat city and therefore the respondents No. 1 to 3 passed the impugned order cancelling the admission of the petitioner in the 1st year MBBS course and consequently the respondent No.4 Joint Admission Committee also cancelled the admission of the petitioner in the 1st year MBBS course from the local students' quota, which is challenged in the present Special Civil Application.

4. Shri BM Mangukia, learned advocate appearing on behalf of the petitioner had submitted that the impugned order passed by the respondents in cancelling the admission of the petitioner in the 1st year MBBS course from the local students' quota is absolutely illegal and most arbitrary and contrary to the evidence on record. He has further submitted that the petitioner had produced the relevant proof and documentary evidences to show that the petitioner is residing at 721,722 Saktivijay Society, Opposite Akar Sports Club, Nana Varachha, Surat. He has also further submitted that the petitioner is residing at the aforesaid address since many years. He has further submitted that the petitioner produced Ration Card of 1995 showing that the petitioner was residing at 77, Indiranagar, Varachha Road, which is within the limits of Surat city. He has further submitted that the petitioner

has produced Income Tax Assessment Order for the financial year 2001-2002 to 2003-2004 in which the address is mentioned as 721-722 Saktivijay Society. The petitioner has also produced Electoral Roll in which the address of the petitioner is shown as the aforesaid address. It is also further submitted that the petitioner is born and brought up at Surat and the Birth-Date Certificate of the petitioner is also submitted. It is averred in the petition that the petitioner was residing at 77, Indiranagar, Varachha Road, Surat upto 1994-1995 which is within the local limits of Surat and the petitioner was admitted in Sarita Vidhyalaya, Surat in Standard 1st and the petitioner prosecuted his studies there upto Standard 5th. It is also further averred in the petition that for a short duration father of the petitioner changed his residence and started residing beyond the limits of Surat Municipal Corporation but within the area of SUDA in the year 1988-1989. For some time thereafter in the year 1988-1989 father of the petitioner resided in 436, Nandanvan Society, Part-II, Puna Gam, Surat and therefore the petitioner changed his school and was admitted in Prerana Vidyalaya and studied Standard 6th and 7th. That thereafter the residence was again changed from Puna Gam to Surat Municipal Corporation at 75, Abhaynagar Society, Varachha Road, Surat and the petitioner was admitted in M.N.J. Patel Secondary School where he studied from Standard 8th to 12th. It is averred and submitted that when the petitioner got admission in Standard 8 in M.N.J. Secondary School the petitioner was residing at Puna Gam but subsequently the petitioner had shifted the residence and necessary application was given while getting admission in Standard 10. The petitioner has produced certificate issued by the Principal to that effect. The petitioner has also produced Electricity Bill and Municipal Tax Bill showing that the petitioner is residing at 721/722 Saktivijay Society within the local limits of Surat City. Therefore it is requested to allow the present Special Civil Application and quash and set aside the order passed by the respondents in cancelling the admission of the petitioner in 1st year MBBS course on local students' quota.

5. In response to the notice issued by this Court, Shri KB Pujara, learned advocate appears on behalf of respondents No. 1 to 3 and an affidavit-in-reply is filed. It is submitted that initially the petitioner was granted provisional admission in the 1st year MBBS course from the local students quota on the basis of the documentary evidences produced along with the application. However subsequently on verification it was

found that the evidences which are produced by the petitioner did not establish that the petitioner is the resident of Surat city and that no documentary evidence is produced that the petitioner is having residence in the Surat city. It was further submitted in the reply that the documentary evidences which are produced by the petitioner are with regard to commercial building and there is no documentary proof to show that the petitioner is having residence within the local limits of Surat and therefore considering the same the admission of the petitioner is rightly cancelled.

6. Shri D.C. Dave, learned advocate who appears on behalf of respondent No.5, has submitted that the petitioner has not produced all the documents which are required to be produced along with the application as contemplated under Rule 1.4 of the Rules for admission to 1st year MBBS course. He has further submitted that the Rules are required to be applied strictly and if all the 3 documents, i.e., House Tax Bill by the Surat Municipal Corporation, Ration Card of the family and electricity bill are required to be produced and if any of the aforesaid 3 documents is not produced then a candidate cannot be given admission on the local students' quota. He has further submitted that in the present case the petitioner has not produced all the 3 documents as contemplated under Rule 1.4 and therefore the petitioner was not entitled to be given admission in the 1st year MBBS course from the local students' quota. Therefore Mr. Dave requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties. To satisfy the conscience of the Court, this Court has directed the respondents No. 1 to 3 to produce the relevant records/documentary evidences produced by the petitioner along with the application for getting admission in 1st year MBBS course. The petitioner has produced the Ration Card. Though it is of the year 1995, the address mentioned therein is of '77, Indiranagar'. "77, Indiranagar" is within the local limits of Surat city. I have also gone through the original Ration Card in which it is found that the said Ration Card is used upto the year 2003. The petitioner has also produced the Electoral Roll and the Identity Card issued by Election Commissioner in which the address of the petitioner and his parents is shown as '721, Saktivijay Society'. The petitioner has also produced the Permanent Account Number and other documentary evidences such as the Income Tax Assessment Order showing the residential address of the petitioner as "721,722

Saktivijay Society. The petitioner has also produced the House Tax Bill issued by the Surat Municipal Corporation in the name of father of the petitioner. It is true, that in the House Tax Bill, the use is shown as 'commercial'. Similarly, in the Electricity Bill also the use is shown as 'commercial' but by that itself it cannot be said that the petitioner is not residing there. It is the contention on behalf of the petitioner that though the petitioner is residing on the 1st floor of the said building, and in the ground floor there are shops, the Municipal Corporation has assessed so far as the shops are concerned, but, so far as the portion which is occupied by the petitioner and used as residence, there is no assessment by the Surat Municipal Corporation and therefore in the House Tax Bill it is shown as 'commercial use'. However, from the said fact itself, it cannot be said that the petitioner is not residing there. The petitioner has produced so many documentary evidences showing that the petitioner was residing at '77, Indiranagar' in the year 1994-1995 (which is within the local limits of Surat) and thereafter at 75, Abhaynagar Society, Varachha Road, Surat, and thereafter to '721-722, Saktivijay Society (the present address). Thus, the petitioner has produced the Ration Card (showing his address at 77, Indiranagar in Income Tax Assessment Order), showing residential address at 721-722, Saktivijay Society (the present address), the application submitted to B.S.N.L. for change of address from Abhaynagar Society to 721-722 Saktivijay Society (the present address), Identity Card issued by the Election Commission showing the address as at '721-722, Saktivijay Society, and the abovereferred documentary evidences clearly establish that the petitioner is the local resident of Surat city.

7.1. It appears that what is weighed with the respondents to come to the conclusion that the petitioner is not the local resident of Surat city is that in the House Tax Bill and the Electricity Bill so far as the property bearing "721-722, Saktivijay Society" is concerned, it is considered to be of 'commercial use'. However, from that itself it cannot be held that the petitioner is not residing in the Surat city. Considering all the aforesaid documentary evidences, that is, Identity Card issued by the Election Commission of India showing the address of the parents of the petitioner at '721-722, Saktivijay Society, the Income Tax Assessment Order, the Ration Card etc., and after going through the same, according to this Court the respondents No. 1 to 3 had fallen in error in not considering the petitioner as 'a local student' and has

committed an error in cancelling the admission of the petitioner in the 1st year MBBS course.

8. The contention, on behalf of the respondent No.5, is that all the three documents, which are contemplated and stated in Rule 1.4, are required to be produced. It appears that Rules have been framed by the Corporation under Section 457 of the Bombay Provincial Municipal Corporations Act, 1949 and which are statutory in character provide, that if any of the aforesaid three documents is produced, it will be sufficient for the purpose of considering the case of a candidate as 'local student'. It also appears that the Rules provided in the Prospectus are not approved by the Board, meaning thereby that all the 3 documents are not required to be produced. In fact, Rule 2.3 defines "local student" that is a student who has passed SSC examination and the qualifying examination Standard 12 from school/college within the limits of Surat Municipal Corporation, as also a student who has passed the above examinations from school/college located within the limits of SUDA or who is residing within the limits of Surat Municipal Corporation. The aforesaid documents are required to be produced to establish and satisfy the authority that in fact a candidate is residing within the local limits of Surat Municipal Corporation/SUDA, and a local student, and the Rules provide only guidance to the authorities so that the decision making process does not become arbitrary and it facilitate the task of the competent authority as well as the students concerned. Thus, if any of the aforesaid documents is not produced for some reason then in that case it cannot be said that a candidate is not a 'local student' if on other documentary evidences the authority is satisfied that a candidate is a 'local student'.

8.1. Considering the aforesaid documentary evidences which are discussed hereinabove, it cannot be said that the petitioner is not residing within the local limits of Surat/SUDA. Initially, the petitioner and his family members were residing at '77, Indiranagar' and thereafter at Abhaynagar and before that for 1 or 2 years at 436, Nandanvan Society, Part-II, Puna Gam, Surat (which is outside the city), however, subsequently at 721-722 Saktivijay Society (which is present address). There is ample material on record to show that the petitioner is residing within the local limits of Surat city. The petitioner is born within the local limits of Surat. The petitioner, by virtue of his studies in the schools within the local limits of Surat, barring 2 years, has furnished the Ration Card in which the residential address is shown as '77 Indiranagar' which is within the

local limits of Surat. The petitioner has also produced the Identity Card issued by the Election Commission of India showing his residential address as '721-722, Saktivijay Society' and other documentary evidences also. Thus, the petitioner is residing within the local limits of Surat city.

9. Under the circumstances, considering the aforesaid documentary evidences, the order passed by the respondents in cancelling the admission of the petitioner in the 1st year MBBS course from 'local students' quota is contrary to the evidence on record and illegal which is required to be quashed and set aside. Accordingly, the impugned orders, cancelling the admission of the petitioner in the 1st year MBBS course, are quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]
rmr.